

E-filed on 9/8/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE CYGNUS TELECOMMUNICATIONS
TECHNOLOGY, LLC, PATENT
LITIGATION

No. MDL-1423
This Order Applies to All Actions

THIS ORDER RELATES TO:
All Actions


C-02-00142 RMW
C-02-00145 RMW
C-02-05437 RMW
C-03-03594 RMW
C-03-03596 RMW
C-03-03378 RMW
C-03-04003 RMW
C-03-05758 RMW
C-04-01791 RMW
C-04-03001 RMW
C-04-03365 RMW
C-04-04247 RMW
C-04-04359 RMW
C-06-03843 RMW
C-06-04295 RMW

ORDER DENYING CYGNUS'S MOTION TO
EXCLUDE EVIDENCE CONSIDERED
DURING REEXAMINATION

Plaintiff Cygnus Telecommunications Technology, LLC moves for summary judgment that references considered in the recent reexamination of the patents-in-suit may not be relied upon by the defendants here when asserting invalidity of the patents-in-suit. It is unclear from the motion the precise basis on which Cygnus seeks to exclude the evidence. Proceedings before the U.S. Patent

1 and Trademark Office are not binding on the courts.¹ See *Quad Envtl. Techs. Corp. v. Union*
2 *Sanitary Dist.*, 946 F.2d 870, 875-76 (Fed. Cir. 1991). If the basis of Cygnus's motion is evidentiary
3 rules, its timing is governed by the prior orders scheduling claim construction and related summary
4 judgment motions, and any such motion to exclude evidence will be considered at the November 20,
5 2006 hearing. Cygnus's motion is denied, though without prejudice to refile as to any specific
6 evidence which defendants seek to introduce at any evidentiary hearing.

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9 DATED: 9/8/06


RONALD M. WHYTE
United States District Judge

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28 ¹ Cygnus clarified at oral argument that it was not seeking to exclude the evidence on the basis that
the USPTO proceedings bound this court.

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7 Counsel for plaintiff is responsible for ensuring that involved attorneys not on the above service list
8 receive a copy of this order, if necessary, and shall inform the court of any omissions.
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